

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:	: Chapter 11
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NAVILLUS TILE, INC., DBA NAVILLUS	: Case No. 17-13162 (SHL)
CONTRACTING	:
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Debtor.	:
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**FINAL ORDER PURSUANT TO 11 U.S.C. §§105(a), 362, 363, AND 364 OF THE  
BANKRUPTCY CODE (I) AUTHORIZING POST-PETITION SECURED FINANCING;  
(II) GRANTING SECURITY INTERESTS AND SUPERPRIORITY CLAIMS;  
(III) AUTHORIZING USE OF CASH COLLATERAL AND (IV) SCHEDULING  
A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(c)**

Upon the motion (the “Motion”)<sup>1</sup> of Navillus Tile, Inc. d/b/a Navillus Contracting, the above-captioned debtor and debtor-in-possession (the “Debtor” or “Navillus”), seeking entry of an interim order and a final order (this “Final Order”) pursuant to sections 105, 362, 363 and 364 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, et seq. (the “Bankruptcy Code”), Rules 4001 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Rules of the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”), *inter alia*:

(i) authorizing Navillus to obtain secured post-petition financing on a superpriority basis up to the aggregate amount of \$135,000,000 (the “DIP Facility”) pursuant to the terms and conditions of that certain Financing Agreement, by and among Navillus, Donal O’Sullivan, individually and Kathleen O’Sullivan, individually (collectively, the “Indemnitors”) as borrowers and Liberty Mutual Insurance Company (“Liberty”), as lender (the “DIP Financing

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion or the DIP Financing Agreement, as applicable.

Agreement”), a copy of which is annexed as Exhibit “1” to the Motion, and authorizing Navillus to borrow up to \$13,500,000 on an interim basis;

(ii) granting Liberty, pursuant to section 364(c)(2) of the Bankruptcy Code, a first priority, perfected and indefeasible lien on and security interest in (the “Post-Petition Lien and Security Interest”) all of Navillus’ assets directly related to the Bonded Contracts including, without limitation, property constituting “cash collateral” (as defined in section 363(a) of the Bankruptcy Code and, hereinafter, “Cash Collateral”), except for the Equipment;

(iii) granting Liberty, pursuant to sections 364(c)(1) and 105 of the Bankruptcy Code, an allowed superpriority administrative expense claim (the “Superpriority Claim”) with priority over any or all administrative expenses of the kind specified in sections 503(b) or 507(b) of the Bankruptcy Code, subject only to the Liberty Carve-Out, to the extent of any losses incurred by Liberty in connection with the Bonds or the Indemnity Agreements after the filing of this chapter 11 case;

(iv) authorizing Navillus’ use of Cash Collateral on the terms and conditions set forth in an interim order, subject to the terms of a rolling thirteen week budget (the “Budget”), a copy of which is annexed to the Motion as Exhibit “2”;

(v) scheduling a final hearing (the “Final Hearing”) to consider entry of a Final Order authorizing any requested relief not granted under the Interim Order on a final basis, all as set forth in the Motion; and

(vi) such other and further relief as is sought in the Motion;

The Court having considered the Motion, the Declaration of Christopher Wu filed in support of the Motion; the Affidavit of Donal O’Sullivan in support of Navillus’ first day motions and orders, the DIP Financing Agreement, the arguments of counsel and evidence

submitted by Navillus at an interim hearing held before the Court on November 29, 2017 and having entered an interim order on December 1, 2017 (the “Interim Order”) at Dkt. No. 85 authorizing Navillus to borrow up to \$7,500,000 on an interim basis; and in accordance with Bankruptcy Rules 2002, 4001 and Local Rule 4001-2, and due and proper notice of the Motion and the Final Hearing having been given; and it appearing that approval of the relief requested in the Motion is fair and reasonable and in the best interest of Navillus, its creditors and its estate, and is essential for the continued operation of Navillus’ business and to preserve and maximize the value of Navillus’ estate for the benefit of all stakeholders; and it further appearing that Navillus is unable to secure unsecured credit for money borrowed allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and this Court having found good and sufficient cause appearing therefor;

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. Petition. On November 8, 2017 (the “Petition Date”), Navillus filed a voluntary petition for relief with this Court under chapter 11 of the Bankruptcy Code. Navillus is continuing in possession of its property, and operating and managing its business, as debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

B. Jurisdiction and Venue. Consideration of the Motion constitutes a “core proceeding” as defined in 28 U.S.C. §§157(b)(2)(A), (D), (K), (M) and (O). This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue of Navillus’ case is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice. Under the circumstances, notice of the Motion, the Final Hearing and the relief sought thereunder given by Navillus to (a) the United States Trustee for the Southern

District of New York; (b) Navillus' twenty (20) largest unsecured creditors; (c) counsel to Liberty Mutual Insurance Company; (d) counsel to Signature Bank; (e) proposed counsel to the Official Committee of Unsecured Creditors (the "Committee"); (f) any known parties asserting a lien against any portion of the Collateral; (g) the Internal Revenue Service; (h) the Securities and Exchange Commission; (i) the United States Department of Justice; and (j) any other party who requests to receive notices (the "Notice Parties") constitutes due and sufficient notice thereof and complies with the Bankruptcy Rules and Local Bankruptcy Rules, and no further notice of the relief sought at the Final Hearing and the relief granted herein is necessary or required.

D. Findings Regarding Pre-Petition Indemnity Agreements and Pre-Petition Secured Indebtedness. Without prejudice to the rights of any other party in interest, Navillus acknowledges, admits, and agrees that:

(i) *Pre-Petition Indemnity Agreements.* Prior to the Petition Date, on or around October 24, 1995, December 12, 2006 and March 15, 2007, the Indemnitors and certain other individuals and non-debtor entities executed General Agreements of Indemnity (collectively, the "Indemnity Agreements") in favor of Liberty (and any affiliate of Liberty). In the Indemnity Agreements, the Indemnitors agreed, among other things, to exonerate, hold harmless and indemnify Liberty from and against any and all liability for losses, fees, costs and expenses incurred by Liberty, *inter alia*, as a result of executing certain surety bonds to guarantee (i) the performance of various contracts by Navillus (the "Performance Bonds") and (ii) the payment of certain obligations of Navillus (the "Payment Bonds" and, together with the Performance Bonds, the "Bonds") with respect to certain of Navillus' contracts (the "Bonded Contracts"). The DIP Financing Agreement is being executed in addition to, and not in lieu of, the Indemnity

Agreements, and nothing contained in the DIP Financing Agreement or this Final Order in any way diminishes the rights set forth in the Indemnity Agreements or the rights of any party under the Bonds.

(ii) *Pre-Petition Obligations.* As of the Petition Date, Navillus and the Indemnitors were not obligated for any losses under the Bonds, however certain costs and expenses are recoverable under the Indemnity Agreements as of the Petition Date. Additionally, certain of those costs shall be paid to Liberty pursuant to an Initial Collateral Deposit Agreement entered into between Liberty and Indemnitors other than Navillus.

(iii) *Pre-Petition Equipment Loans.* Prior to the Petition Date, Navillus entered into equipment loans with Signature Financial LLC (“Signature Financial”) secured by two (2) 2015 Toyota Forklifts Model 8FDU25, serial numbers 60497 and 60493, together with all present and future attachments, accessories, additions, accessions, parts and supplies, and any replacements thereof, installed in, affixed to, or used in connection with said property, and all proceeds of said property, and a 2014 Kenworth T800 truck (the “Equipment”). As of the Petition Date, approximately \$68,080 remained due and owing Signature Financial on account of the loans secured by the Equipment.

E. Findings Regarding DIP Financing.

(i) *Need for Post-Petition Financing.* Navillus’ ability to continue operating on its open construction projects and maintain its business relationships with Tishman and all project owners depends on obtaining immediate access to the DIP Facility to address their concerns regarding Navillus’ ability to complete its open bonded construction projects (“Bonded

Projects”). The access of Navillus to liquidity through the incurrence of new indebtedness for borrowed money is vital for preserving and maintaining the going concern value of Navillus.

(ii) *No Credit Available on More Favorable Terms.* Navillus is unable to obtain financing on terms more favorable than those offered by Liberty under the DIP Facility and is unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. Navillus is also unable to obtain secured credit under section 364(c) of the Bankruptcy Code on equal or more favorable terms than those offered by Liberty under the DIP Facility. Navillus has made an adequate showing of its efforts to obtain financing on more favorable terms. A credit facility in the amount and on the terms provided by the DIP Facility is not available from Liberty without Navillus granting Liberty (a) the Post-Petition Lien and Security Interest and the Superpriority Claim as set forth herein, and (b) the other protections set forth in this Final Order.

(iii) *Business Judgment and Good Faith Pursuant to Section 364(e).* The terms and conditions of the DIP Facility and the DIP Financing Agreement, as modified by this Final Order, are fair, reasonable, and the best available to Navillus under the circumstances, reflect the exercise of prudent business judgment by Navillus consistent with its fiduciary duties, and are supported by reasonably equivalent value and consideration. The DIP Facility was negotiated without collusion, in good faith and at arms’ length between and among Navillus and Liberty. Use of credit to be extended by Liberty to Navillus under the DIP Facility shall be deemed to have been so allowed, advanced, made, used or extended in good faith, within the meaning of section 364(e) of the Bankruptcy Code and in express reliance on the protections offered by section 364(e) of the Bankruptcy Code, and Liberty is therefore entitled to the full

protection and benefits of section 364(e) of the Bankruptcy Code in the event that this Final Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

F. Good Cause. The relief requested in the Motion is necessary, essential and appropriate for continued operations, and the management, maintenance and preservation of Navillus' assets as it will, among other things, provide Navillus with the necessary liquidity to (i) minimize disruption to ongoing operations and allow for Navillus to perform and complete its open construction projects and continue bidding work to obtain new construction projects; (ii) preserve and maximize the value of the estate for the benefit of all creditors; and (iii) avoid immediate and irreparable harm to Navillus, its creditors, its business, its employees, and its estate. It is in the best interest of Navillus' estate for Navillus to be allowed to establish the DIP Facility contemplated by the DIP Financing Agreement and to grant the other relief set forth herein. Good cause has been shown for the relief requested in the Motion and as granted in this Final Order.

Based upon the foregoing findings and conclusions, and upon the record made before this Court at the Final Hearing, and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. DIP Financing Approved. The Motion is granted on a final basis in accordance with the terms of this Final Order. All objections to the Motion, to the extent not withdrawn or resolved, and all reservations of rights included therein, are hereby overruled.

2. Authorization of the DIP Facility. Navillus is expressly and immediately authorized to execute and deliver the DIP Financing Agreement and to incur and perform any obligations in accordance with, and subject to, the terms of this Final Order and the DIP Financing Agreement, and to execute and deliver all instruments and documents which may be

necessary or required for the performance by Navillus under the DIP Financing Agreement and any documents executed pursuant thereto and the creation and perfection of the Post-Petition Lien and Security Interest described in and provided for by this Final Order and the DIP Financing Agreement. The DIP Financing Agreement is hereby approved and shall represent a valid and binding obligation of Navillus, enforceable against Navillus and its estate in accordance with its terms. To the extent of any conflict between the terms of the DIP Financing Agreement and this Final Order, the terms of this Final Order shall govern.

3. Authorization to Borrow. Subject to the terms and conditions set forth in the DIP Financing Agreement and this Final Order, Navillus is hereby authorized to borrow up to \$135,000,000 under the DIP Facility; provided, however, that Navillus shall borrow funds under the DIP Facility only to the extent that Navillus determines in the exercise of its sound business judgment that such borrowing pursuant to the Project Budget (defined below) for a particular Bonded Project(s) is necessary to ensure adequate liquidity, after taking into account Navillus' then available balances of cash and marketable securities ("Cash Balances"), to enable Navillus to operate in the ordinary course of business in completing such Bonded Project and for payment of general corporate overhead expenses related to such Bonded Project consistent with the Permitted Uses defined in paragraph F of the DIP Financing Agreement.

4. Use of DIP Facility Proceeds. From and after the Petition Date, Navillus shall use the proceeds of the DIP Facility only for the purposes specifically set forth in this Final Order, the DIP Financing Agreement and any documents executed pursuant thereto. Notwithstanding anything to the contrary in this Final Order or the DIP Financing Agreement, in no event shall any proceeds of the DIP Facility be used (a) for any purpose that is not permitted under this Final Order; (b) in a manner not consistent with any Bonded Project-specific budget (the "Project



Budget”) or supplemental Funding Request for a specific Bonded Project, including documents supporting the need for such supplemental Funding Request, provided to Liberty under the DIP Financing Agreement, with copies delivered concurrently (but not less than two (2) business days notice) to proposed counsel and proposed financial advisors for the Committee; (c) for any investigation or analysis of any claim or cause of action against Liberty or any of its affiliates; (d) for any preparation or prosecution of any claim or cause of action against Liberty or any of its affiliates and (e) absent further Court order, for the payment of bankruptcy professional fees and expenses, or payments to insiders (as defined in the Bankruptcy Code) outside the ordinary course of business for uses that do not constitute Permitted Uses under the DIP Financing Agreement. Navillus shall provide Liberty and the Committee with updates on its Cash Balances and variance reports not less than on a monthly basis. The Committee shall have the right to raise with Navillus, after receipt of a Project Budget or supplemental Funding Request and during the two (2) business day notice period set forth above, its objection as to need for Navillus to borrow funds under the Project Budget, supplemental Funding Request, or any expense items contained therein and to the extent such objection is not consensually resolved, to seek this Court assistance in resolving such objection.

5. DIP Loan Obligations. The term “DIP Loan Obligations” shall mean any monies advanced by Liberty under the DIP Facility during the time period covered by this Final Order along with any losses incurred by Liberty in connection with the Bonds or the Indemnity Agreements after the filing of this chapter 11 case.

6. Superpriority Claim. Pursuant to section 364(c)(1) of the Bankruptcy Code, but subject to the Liberty Carve-Out (as defined herein), and to the rights of lien law trust fund beneficiaries pursuant to Article 3-A of the Lien Law of the State of New York, to the extent that

the Post-Petition Lien and Security Interest granted Liberty is insufficient to fully satisfy the DIP Loan Obligations, Liberty shall then be entitled to an allowed superpriority administrative expense claim against Navillus (the "Superpriority Claim") for (a) any amounts actually borrowed by Navillus under the DIP Facility which have not been repaid, (b) unreimbursed actual losses incurred by Liberty on any Bonded Projects due to a post-petition performance breach or post-petition default on such Bonded Project by Navillus, and (c) with respect to either of the Bonded Projects entitled One Vanderbilt and Manhattan West, unreimbursed actual losses incurred by Liberty due to a prepetition default by Navillus on (i) the One Vanderbilt Bonded Project, conditioned upon and provided that Liberty has advanced to Navillus under the DIP Facility not less than \$10 million with respect to the One Vanderbilt Bonded Project, and (ii) the Manhattan West Bonded Project, conditioned upon and provided that Liberty has advanced to Navillus under the DIP Facility not less than \$5 million with respect to the Manhattan West Bonded Project. The Superpriority Claim shall have priority over any and all administrative expense claims of the kind specified in sections 503(b) or 507(b) of the Bankruptcy Code, as provided under sections 364(c)(1) and 105 of the Bankruptcy Code; and shall at all times be senior to the rights of Navillus, and the estate, any successor trustee or other estate representative and any creditor or other party in interest to the extent permitted by law. The Superpriority Claim shall not extend to any avoidance actions under Chapter 5 of the Bankruptcy Code or the proceeds thereof.

7. Post-Petition Lien and Security Interest. As security for the DIP Loan Obligations and without the necessity of the execution, recordation of filings by Navillus of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by Liberty or its agents over any collateral,

Liberty is hereby granted a first priority, perfected and indefeasible lien on and security interest in (the “Post-Petition Lien and Security Interest”), pursuant to section 364(c)(2) of the Bankruptcy Code, all of Navillus’ assets directly related to the Bonded Contracts, except for the Equipment (the “Collateral”), and except to the extent any funds received by Navillus related to the Bonded Contracts constitute trust funds under Article 3-A of the Lien Law of the State of New York. The Post-Petition Lien and Security Interest shall not extend to any avoidance actions under Chapter 5 of the Bankruptcy Code or the proceeds thereof.

8. Perfection of Post-Petition Lien and Security Interest. This Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Post-Petition Lien and Security Interest, without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any lockbox or deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the Post-Petition Lien and Security Interest, or to entitle Liberty to the priorities granted herein. Notwithstanding the foregoing, Liberty is authorized to file, at its sole discretion, such financing statements, mortgages, notices of liens and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the Post-Petition Lien and Security Interest, and all such financing statements, mortgages, notices, other documents and approvals shall be deemed to have been filed or recorded as of the Petition Date; *provided, however*, that no such filing or recordation shall be necessary or required in order to create or perfect the Post-Petition Lien and Security Interest. Navillus is authorized and directed to execute and deliver promptly upon demand to Liberty all such financing statements, mortgages, notices and other documents as

Liberty reasonably requests. Liberty in its discretion may file a photocopy of this Final Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or similar instrument.

9. Liberty Carve-Out. Liberty's Superpriority Claim and Post-Petition Lien and Security Interest granted under this Final Order or in existence on, or arising after, the Petition Date, shall be subject only to a carve-out for the following (the "Liberty Carve-Out"): (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee, in such amounts as agreed to by the United States Trustee or as determined by order of the Court, pursuant to 28 U.S.C. § 1930(a) and 31 U.S.C. § 3717; (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (iii) all unpaid fees and expenses incurred prior to the occurrence of a DIP Financing Default due to the occurrence of an event set forth in paragraph F(d) or F(e) of the DIP Financing Agreement, to the extent allowed at any time, whether by interim order, final order, procedural order, or otherwise, (the "Allowed Professional Fees") by persons or firms retained by Navillus pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals") and the Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons"); and (iv) all Allowed Professional Fees incurred after the occurrence of a DIP Financing Default due to the occurrence of an event set forth in paragraph F(d) or F(e) of the DIP Financing Agreement by (a) the Debtor Professionals in an aggregate amount not to exceed \$2,000,000, and (b) the Committee Professionals in an aggregate amount not to exceed \$1,000,000. All parties reserve the right to objection to any Professional Person's application for allowance fees and expenses. Under no circumstances shall a Professional Person be required to disgorge any paid

Allowed Professional Fees. For the avoidance of doubt, any payments made pursuant to the Liberty Carve-Out shall not reduce the amount of the Superpriority Claim or the amount of any obligation due to Liberty under the Bonds, the Indemnity Agreements, the DIP Financing Agreement or related agreements, or otherwise.

10. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Final Order and the DIP Financing Agreement and the Budget, Navillus is authorized to use Cash Collateral until the time of termination of the DIP Facility.

11. Voluntary Letters of Default. The irrevocable assignment, irrevocable letter of direction and voluntary letters of default being provided to Liberty pursuant to paragraph L of the DIP Financing Agreement shall only be used by Liberty, with respect to a specific Bonded Contract if, pursuant to a further Order of the Court after notice and hearing, (a) Navillus is terminated for default on that specific Bonded Contract or (b) Navillus rejects that specific Bonded Contract. Upon such Order of the Court relating to the termination or rejection of a Bonded Contract, Liberty shall be granted relief from the automatic stay without further Order of the Court.

12. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Final Order. Based on the findings set forth in this Final Order and the record made during the Interim Hearing and the Final Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, Liberty is entitled to the protections provided in section 364(e) of the Bankruptcy Code with respect to the DIP Loan Obligations and the grant of Post-Petition Liens and Security Interests and Superpriority Claim. Any such modification, amendment or vacatur shall not affect the validity

and enforceability of any advances previously made or made hereunder, or any lien, claim or priority authorized or created hereby. Any liens or claims granted to Liberty hereunder arising prior to the effective date of any such modification, amendment or vacatur of this Final Order shall be governed in all respects by the original provisions of this Final Order, including entitlement to all rights, remedies, privileges and benefits granted herein.

13. Modification of Automatic Stay. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified solely to the extent necessary to authorize Navillus and Liberty to take any action necessary to implement and effectuate the terms and provisions of this Final Order, the DIP Financing Agreement and any documents executed pursuant thereto.

14. Liberty Not Responsible Person. In (a) making the decision to provide the DIP Facility; (b) administering the DIP Facility; or (c) extending related financial accommodations to Navillus, Liberty shall not be considered to be exercising control over any operations of Navillus or acting in any way as a “responsible person,” or as an “owner or operator” with respect to the operation or management of Navillus, or otherwise cause liability to arise to the federal or state government or the status of responsible person or managing agent to exist under any applicable law. Navillus retains complete control of and responsibility for its operations, over which Liberty assumes no responsibility or control.

15. No Third Party Rights. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

16. No Waiver by Failure to Seek Relief. The failure of Liberty to seek relief or otherwise exercise its rights and remedies under this Final Order, the DIP Financing Agreement,

or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise.

17. Authorization for Estimated Tax Payments. In accordance with the current Budget, Navillus is authorized to advance funds, in an aggregate amount not to exceed \$7,700,000 to Donal O'Sullivan, the principal shareholder of Navillus ("O'Sullivan"), to be used solely for his allocable share of estimated 2017 tax payments for New York City, New York State and Federal taxes attributable to projected taxable income earned by Navillus in 2017 (the "Estimated Tax Payments"). Navillus shall advance the Estimated Tax Payments for New York City, New York State and Federal taxes not earlier than December 26, 2017. O'Sullivan shall be obligated and required to return to Navillus within three (3) business days from filing his extensions in April 2018 and/or his final tax returns any portion of the Estimated Tax Payments in excess of the actual amount of New York City, New York State and Federal taxes owed based on the O'Sullivan's taxable income in 2017; provided, however, that no portion of the Estimated Tax Payment shall be used to pay any taxes attributable to income other than the income generated by a Navillus. Navillus and O'Sullivan shall promptly provide the Committee with proof of payment and copies of Navillus' Form K-1 in redacted form to demonstrate the portions of the Estimated Tax Payment allocable to Navillus.

18. Binding Effect of Final Order. Immediately upon execution by this Court, the terms and provisions of this Final Order shall become valid and binding upon and inure to the benefit of Navillus, Liberty, all other creditors of Navillus, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in this case, or upon dismissal of this case.

19. Binding Effect on Non-Debtor Indemnitors. In the event that the full extent of the relief sought in the Motion is not granted as to Navillus, the non-debtor Indemnitors shall nevertheless be bound by the DIP Financing Agreement pursuant to the terms thereof.

20. Headings. Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Final Order.

21. Survival. The terms and provisions of this Final Order, including the claims, liens, security interests and other protections granted to Liberty pursuant to this Final Order, notwithstanding the entry of any further order, shall continue in this case, or following dismissal of this case, and shall maintain their priority as provided by this Final Order until any and all obligations pursuant to the DIP Financing Agreement and this Final Order have been indefeasibly paid in full (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms), and any agreement to extend credit under the DIP Facility is terminated.

22. Bankruptcy Rule 7052. This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry of this Final Order.

23. Bankruptcy Rule 6004(h). This Final Order shall take effect immediately upon the entry hereof notwithstanding the stay provisions of Bankruptcy Rule 6004(h) which are hereby waived.



24. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Final Order according to its terms.

Dated: New York, New York  
December 21, 2017

/s/ Sean H. Lane  
HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE